IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DON MORELLO and JEAN MORELLO,
Husband and Wife,
d/b/a PLEASANT SPRINGS SUBS, INC.,

Plaintiffs,

v.

RANGER ENTERPRISES, INC.,
a Foreign Corporation Incorporated in Illinois

Defendant.

OPINION AND
ORDER

03-C-0231-C

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This is a civil action for in which plaintiffs Don and Jean Morello and Pleasant Spring Subs, Inc. seek injunctive relief to enjoin defendant Ranger Enterprises, Inc. from terminating their tenancy at the property located at 2762 Highway N., Cottage Grove, Wisconsin until the dispute is settled by binding arbitration. (I note that the caption may be in error with respect to plaintiff Pleasant "Springs" Subs, Inc. It appears that the correct name is Pleasant "Spring" Subs, Inc. Also, it is unclear whether plaintiffs are filing this action in their individual capacities or in their capacity as corporate officers of Pleasant Spring Subs, Inc.) Plaintiffs brought the action in the Circuit Court for Rock County, Wisconsin, but defendant removed

it to this court pursuant to 28 U.S.C. §§ 1441 and 1446, alleging diversity jurisdiction.

Plaintiffs initially filed motions in this court to (1) remand pursuant to 28 U.S.C. § 1447(c) on the ground of lack of subject matter jurisdiction because the amount in controversy does not exceed $75,000; and (2) grant a temporary restraining order and preliminary injunction. Since the filing of those two motions, plaintiffs have filed a motion to compel arbitration and stay this court's proceedings until such arbitration has occurred pursuant to §§ 3 and 4 of the Federal Arbitration Act, 9 U.S.C. §§ 1-16. Before I can reach plaintiffs' motion to stay proceedings, I must decide whether jurisdiction exists to hear the case. See generally, Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002) (court has independent obligation to decide whether jurisdiction exists).

I conclude that the court has subject matter jurisdiction over plaintiffs' claims. Therefore, plaintiffs' motion to remand this case will be denied. Because both parties agree that this dispute is subject to the lease agreement's arbitration clause, I will grant plaintiffs' motion to compel arbitration and stay this court's proceedings, including plaintiffs' motion for a temporary restraining order or preliminary injunction, pending completion of the arbitration.

From the facts proposed by the parties, I find that the following are material and undisputed.

UNDISPUTED FACTS

Plaintiffs Don Morello and Jean Morello are citizens of Wisconsin. Defendant Ranger Enterprises is incorporated in the state of Illinois, with its primary place of business located in Rockford, Illinois. On September 17, 1997, plaintiffs entered into a real estate lease to operate their development corporation, Pleasant Spring Subs, Inc., as a Cousin's Sub restaurant, located at 2762 Highway N, Cottage Grove, Wisconsin, with the then-owner of the premises, Grandma's Home Cooking of Wisconsin, Inc. Sometime later, defendant purchased the premises and acquired a successor interest in plaintiffs' real estate lease. The lease requires plaintiffs to pay $1,500 per month in rent to defendant. Defendant wants to establish a submarine sandwich shop of his own on the premises currently occupied by plaintiffs.

The lease was set to expire on December 31, 2002. However, it included a provision granting plaintiffs the option to renew the lease for an additional five-year period if plaintiffs provided the landlord at least 90 days' written notice of their intent to exercise the option. The lease provided that all terms and conditions of the lease would remain the same upon renewal, with the exception of the rent, which had to be renegotiated before the commencement of the renewal period. The lease contains a "holdover" clause, creating a month-to-month extension of the lease should plaintiffs maintain possession of the premises after the lease terminates. The lease requires that any controversy or claim relating to the lease be settled by binding arbitration.

On May 24, 2002, plaintiffs' attorney wrote to defendant, notifying it that plaintiffs were exercising their option to renew the lease for an additional five-year period. Between July 2002 and November 2002, plaintiffs made several attempts by telephone and through defendant's agents to renegotiate a new rental amount with defendant. On April 8, 2003, defendant sent plaintiffs a letter, notifying plaintiffs that it was terminating the tenancy effective May 31, 2003. On April 15, 2003, plaintiffs' attorney wrote defendant, noting plaintiffs' attempt to renegotiate the lease terms and advising defendant that upon receiving no reply from defendant, plaintiffs assumed the lease would be renewed under the same terms and that plaintiffs wanted to invoke the arbitration clause to resolve the dispute about their tenancy.

The parties executed a stipulation. On May 21, 2003 this court entered an order providing that defendant shall refrain from removing the plaintiffs from the premises until this court decides plaintiffs' motions.

OPINION

A. Motion to Remand

There are two elements to federal diversity jurisdiction under 28 U.S.C. § 1332. First, there must be complete diversity of parties. Second, the amount in controversy must exceed $75,000. Although neither party disputes diversity of citizenship, the court has an independent

obligation to insure that it exists. Wild, 292 F.3d 526. To that end, I issued an order on August 11, 2003 asking defendant to clarify whether Pleasant Spring Subs, Inc. is a separate party to this lawsuit and to advise the court of Pleasant Spring Subs, Inc.'s state of incorporation and its principal place of business. Defendant responded to the order on August 14, 2003. Defendant stated that (1) defendant is a corporation existing under the laws of the state of Illinois with its principal place of business in Rockford, Illinois; (2) plaintiffs are Wisconsin citizens domiciled in Verona, Wisconsin; and (3) Pleasant Spring Subs, Inc. is a Wisconsin corporation with its principal place of business in Beloit, Wisconsin. I am satisfied that diversity of citizenship exists.

Plaintiffs dispute the amount in controversy. Generally, the amount in controversy alleged by a plaintiff in good faith will be determinative on the issue of the jurisdictional amount unless it appears to a legal certainty that the claim is for less than that required by the statute. See Rexford Rand Corp. v. Ancel, 58 F.3d 1215, 1218 (7th Cir. 1995). However, if the court's jurisdiction is challenged by the court or the opposing party, the party seeking to invoke jurisdiction bears the burden of supporting its jurisdictional allegations by "competent proof." NFLC, Inc. v. Devcom Mid- America, 45 F.3d 231, 237 (7th Cir. 1995) (citing McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936)). The Court of Appeals for the Seventh Circuit has interpreted this burden to mean that a party must show "to a reasonable probability that jurisdiction exists." Chase v. Shop 'N Save Warehouse Foods, 110

F.3d 424, 427 (7th Cir. 1997). As the party removing the case to federal court, defendant bears the burden of showing that the amount in controversy exceeds $75,000 on the basis of facts existing at the time of removal. Id.; see also Gould v. Artisoft, Inc., 1 F.3d 544, 547 (7th Cir. 1993).

According to defendant, the issue is whether plaintiffs will be allowed to remain tenants for five more years at $1,500 a month in rent. It calculates the amount at stake over the five-year period to be at least $82,500-$90,000, depending upon whether the renewed lease begins January 1 or June 1, 2003. I agree. "In a suit for injunctive relief, 'the amount in controversy is measured by the value of the object of the litigation.'" See Macken v. Jensen, 333 F.3d 797, 799 (7th Cir. 2003) (citing Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 347 (1977). The court of appeals has determined that "the object may be valued from either perspective --- what the plaintiff stands to gain, or what it would cost the defendant to meet the plaintiff's demand." Id. at 799-800. In this case, the object of the litigation is whether plaintiffs triggered the five-year lease renewal option or are considered holdover tenants. If plaintiffs are allowed to remain in the premises through December 31, 2007, plaintiffs stand to gain tenancy in the premises worth $82,500-$90,000 over the five-year renewal period. See, e.g., Scott-Burr Stores Corp. v. Wilcox, 194 F.2d 989, 990 (5th Cir. 1952) (amount in controversy for a lease renewal period of ten years was the aggregate rental amount over the ten-year period). Plaintiffs do not dispute that they will owe defendant

$90,000 over the course of the five-year renewal period. This amount exceeds the $75,000 threshold to establish diversity jurisdiction. Therefore, I will deny plaintiffs' motion to remand.

B. Motion to Compel Arbitration and Stay Proceedings

Pursuant to 9 U.S.C. § 3, plaintiffs have asked this court, to find that the issues in the pending action are referable to arbitration under the parties' lease agreement and to stay court proceedings until arbitration has occurred. Also, plaintiffs seek an order that arbitration proceed in the manner provided in the parties' lease agreement, pursuant to 9 U.S.C. § 4. The Federal Arbitration Act represents "a strong federal policy favoring arbitration as a means of dispute resolution." Morrie Mages & Shirlee Mages Foundation v. Thrifty Corp., 916 F.2d 402, 405 (7th Cir. 1990). The act provides that a written agreement to arbitrate a dispute arising out of a contract or transaction involving commerce "shall be valid, irrevocable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Section 3 of the arbitration act provides for the stay of any action in federal court "upon any issue referable to arbitration under an agreement in writing for such arbitration," and § 4 provides for a court order compelling arbitration where one party has failed, neglected, or refused "to arbitrate under a written agreement." 9 U.S.C. § 4; see also Morrie Mages & Shirlee Mages Foundation, 916 F.2d at 406 ("Under the terms of the FAA, district courts have no discretion to refuse a request of a stay and shall direct the parties to

proceed to arbitration on issues covered by an arbitration agreement.").

Defendants do not dispute that the lease at issue contains an arbitration clause and that the parties' underlying dispute may be subject to arbitration. Dft.'s Br., dkt. # 14, at 3. Because federal policy favors arbitration and the parties do not dispute that they are subject to the lease agreement's arbitration clause, I will grant plaintiffs' motion to stay this action pursuant to 9 U.S.C. § 3 and compel arbitration pursuant to 9 U.S.C. § 4.

It is my understanding that plaintiffs are not pursuing their motion for a temporary restraining order and preliminary injunction at this time. In any event, it appears to be a matter that can be resolved in arbitration. In the event arbitration does not resolve all issues, plaintiffs may proceed with their motion for a temporary restraining order and preliminary injunction.

ORDER

IT IS ORDERED that

1. Plaintiffs Don and Jean Morello and Pleasant Spring Subs, Inc.'s motion to remand is DENIED;

2. Plaintiffs Don and Jean Morello and Pleasant Spring Subs, Inc.'s motion to stay court proceedings and compel arbitration is GRANTED. Because the arbitration proceeding may resolve all of the issues among the parties and make any further proceedings in this court

unnecessary, the clerk of court is directed to close the case administratively. In the event the arbitration does not resolve all of the issues, the case will be reopened immediately upon motion of any party and will be set promptly for trial, with the parties retaining all rights they would have had the case not been closed for administrative purposes.

Entered this 18th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge